



June 19, 2017

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Jennifer Piorko Mitchell
The Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Special Notice: Engagement Initiative

Dear Ms. Mitchell:

STA¹ welcomes the opportunity to offer comment on FINRA Special Notice (the "Notice") Engagement Initiative. We greatly respect and appreciate FINRA's 360 Review, in particular this request for comment on FINRA's Engagement Initiatives. STA's diverse membership, as measured by geography and business models, and long history of interacting with FINRA and its preceding organizations offers a unique perspective on FINRA's Engagement Initiatives which we hope will contribute favorably to any strategic decisions made by FINRA .

Our remarks are based on these fundamental beliefs:

STA believes that the majority of FINRA member firms want to conduct their affairs in compliance with the regulations set forth by FINRA and they look to FINRA for guidance and education on how to do so.

STA believes that it is imperative for FINRA to be able to protect investors by identifying and prosecuting nefarious and illegal behavior whether it is by an individual or a firm.

STA believes that the efficacy of FINRA as an SRO should be measured equally on its ability to accomplish both these roles as educator and investor protector.

¹ STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 26 Affiliate organizations with 4,200 individual professionals, most of who are engaged in the buying, selling and trading of securities. The STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association's founding principle, Dictum Meum Pactum – "My Word is My Bond"



1. Engagement Through Advisory, *Ad Hoc* and District Committee

General Remarks

STA is supportive of committees comprised of subject matter experts which provide input to regulators on issues impacting the financial services industry. These committees take various forms, whether they are long standing committees on specific functions or *Ad Hoc* committees which address a specific issue or event. Regardless of how an advisory committee is organized there are characteristics regarding levels of transparency, membership, responsibilities and means of soliciting input from non-committee members that need to be considered.

With regard to FINRA's Advisory and *Ad Hoc* Committees, we do not believe they are operating as effectively or vibrantly as they can. Therefore, we offer these general and specific recommendations.

a. *Transparency*

The STA supports certain attributes associated with transparency that are found in the Securities and Exchange Commission Equity Market Structure Advisory Committee, ("EMSAC")². These include transparency into: the names of the committee members; pre-meeting published agendas; live webcast of meetings; post meeting notes which are made available to the public; the use of roundtables with non-committee members; and a process which allows all industry participants to provide comment. In our letter to the Commission dated September 5, 2014³ we stated:

"Including roundtables as part of the MSAC process would provide a unique way for the Advisory Committee to receive information and feedback to assist in the understanding of complex issues, and it would also provide additional transparency to the MSAC. In addition to roundtables, the STA recommends that those who are not involved in the roundtables or on the MSAC have ample opportunity to submit comments on the topics in advance of meetings."

b. *Membership*

In order for any advisory committee to be vibrant and able to provide input, parties impacted by the issues or events under which the advisory committee is organized need to be directly represented on the committee. Assigning existing members with added responsibility of representing the interests of parties with dissimilar business models degrades the confidence market participants will have in the committee itself.

² [U.S. Securities and Exchange Commission, Equity Market Structure Advisory Committee](#)

³ [STA letter to Ms. Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, September, 5, 2014](#)

c. Recommendations

Advisory committees organized under the construct of having to make recommendations require special consideration and review in the areas of membership and transparency. Failing to do so could undermine trust and credibility in the committee and its recommendations.

d. New Committee: Enforcement

As an SRO, FINRA should have a advisory committee which can provide FINRA staff with input as to: (i) enforcement priorities; (ii) trends in the industry which may warrant further oversight/enforcement action; and (iii) appropriate sanctions (i.e., a check and balance to ensure that fines have some rationale relationship to the misconduct).

STA recommends that FINRA incorporate more transparency and an effective means to gather input from non-committee members into its Advisory and *Ad Hoc* Committees. We believe doing so will result in robust input and a vibrant committee structure. Additionally, FINRA should pay special consideration to membership and transparency for any committee it expects to make recommendations. FINRA should also put in place an Enforcement Advisory Committee comprised of industry experts which can provide meaningful input on (i) enforcement priorities; (ii) trends in the industry which may warrant further oversight/enforcement action; (iii) appropriate sanctions.

2. Engagement in Connection with FINRA Rulemaking

General Remarks; FAQs and Guidance

STA believes that FINRA's Rulemaking process generally functions well. The notice and comment periods are reasonable, FINRA's willingness to meet with stakeholders impacted by new rules is more than adequate, and the commitment to economic analysis as witnessed by the creation of the Office of the Chief Economist are examples of a process that functions well. STA also believes that FAQs and Guidance are valuable instruments at FINRA's disposal to provide meaningful information to member firms in maintaining their compliance responsibilities, which results in benefits for investors. The effective use of FAQs and Guidance can achieve outcomes similar to those obtained with rule making but with less of a cost burden on industry participants. Therefore, STA is a strong proponent on the use of FAQs and Guidance. As an SRO, FINRA is uniquely positioned to observe industry practices and to gather input from experts on a wide range of matters found among participants in the financial services industry. This enables FINRA to provide detailed FAQs and Guidance. However, it is STA's recommends that FINRA exercise its use of FAQs and Guidance more frequently and in greater detail.

STA recommends that FINRA exercise its use of FAQs and Guidance more frequently and in greater detail.

3. Reporting on FINRA Operations

a. Funding Mechanisms

STA has concerns with the funding mechanisms FINRA uses to discharge its regulatory responsibilities and activities. STA is aware of the four (4) primary Member Regulatory Fees: the Gross Income Assessment (GIA); the Personnel Assessment (PA); the Trading Activity Fee (“TAF”); and the Branch Office Assessment. Our concerns are grounded in the lack of transparency on how much each regulatory fee generates and whether such fees are reasonable and an equitable allocation of costs for member firms. We have particular concerns regarding the TAF charged to proprietary trading firms who do not hold customer accounts. In our letter⁴ on FINRA Regulatory Notice 15-13, *Proposed Exemptions to the Trading Activity Fee (“TAF”) for Proprietary Trading Firms*, STA wrote:

“Therefore, the STA supports FINRA’s Notice to exclude from the TAF transactions by a proprietary trading firm on exchanges of which the firm is a member, although we feel more cost reductions in the form lower TAF rates are needed. We believe a lower TAF will better improve the likelihood that the SEC’s desired goal of a more comprehensive surveillance and uniform regulation of trading activity by proprietary trading firms is achieved. In addition, they would ensure that FINRA fulfills its statutory obligation that its rules provide for the equitable allocation of reasonable dues, fees and other charges among its members.”

STA recommends that FINRA review and make public its funding mechanisms to ensure fees charged to members represent an equitable allocation of costs associated with its regulatory functions. To be clear, the STA believes that regulatory authorities require efficient means, processes and rules in order to discharge their responsibilities properly and that adequate funding is needed in order to achieve these goals

b. Examination Process; Skill set of Examiners

Historically, the FINRA examination process, among other things, was an effective means for broker dealers (“BDs”) to become more informed on policy and procedures specific for their firms. More recently, BDs have become frustrated with their exams due to a perceived general degradation in the responses by examiners to policy and procedure inquires. STA believes this frustration is rooted in the shift of skill set caused by the

⁴ [STA letter to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, June 19, 2015](#)

greater use of analytics by BDs in surveillance and FINRA's inability to train its examiners accordingly. As the financial services industry continues to quickly rapidly evolve in large part due to technological innovations, it is more important than ever for the FINRA staff to keep pace with the ever-changing securities industry. We suggest that FINRA examiners, supervisors and directors visit with member firms (in non-exam/investigation settings) more frequently and become better trained in areas such as technology, information security, cybersecurity, and credit and market risk.

The increased demands for transparency have led to greater use of analytics which in turn has led to a shift in the skill set for compliance and risk officers. STA recommends that FINRA review its training program of examiners to ensure they are best prepared to meet the challenges of today's heavy reliance on data, technology and analytics.

c. Insight into examinations and investigations; Appropriate Circumstances

Historically, the examination and investigation processes have proven to be an effective prevention strategy for FINRA and the industry to the benefit of investors. Due to several factors, in particular that the exam and investigation processes take longer to complete, this prevention strategy no longer exists to the same degree it used to. STA recognizes that FINRA needs to keep exams and investigations confidential; however, we believe there are instances when FINRA could provide member firms with more insight into their ongoing exam and investigation. It is not uncommon for a FINRA exam or investigation to take years to complete. It is an enormous consumption of time and resources, both for the member and FINRA. It additionally introduces the risk that FINRA fines a member for conduct subject to the investigation for which disposition took an unreasonably long amount of time. There are many occasions where FINRA can address a particular concern if it simply had a frank discussion with the member and allowed the member to respond and/or take action to promptly remediate without pursuing enforcement. This would be particularly helpful in areas where investor protection and market stability are not a concern, such as trade or OATS reporting issues which impact FINRA's surveillance processes. There are times where FINRA's concerns may be based on a misunderstanding of the particular matter at issue. By engaging the member earlier in the process, where appropriate, the concern may be addressed.

STA believes FINRA places an important emphasis on prevention and understands how the examination process contributes to it. STA recommends that, on those occasions where appropriate, FINRA engage members under an exam or investigation review earlier in the process so the member can more thoroughly explain the matter.

4. Other

a. Lapsed Licenses

Obtaining the necessary licenses to practice in the financial services industry requires an intense commitment by individuals who must demonstrate mastery in the securities business and their employers who must sponsor them. STA supports the high standards required to pass such exams in order to obtain these licenses. However, STA believes that the requirements for individuals whose employment lapses beyond FINRA's regulations to retake exams in order to re-enter the financial services industry are too onerous. STA believes FINRA's current policy is flawed because it creates an unreasonable barrier of re-entry for qualified individuals, in particular those who are primary child care providers. According to FINRA regulations, the Series 7 license expires after an employment lapse of two years. STA has no comment on whether two (2) years is too long or too short a period of time, but we do believe that FINRA should institute a new reinstatement policy and process that has the following characteristics: the ability for individuals in a lapse state to take continuing education classes; requires individuals to apply and upon approval have their license(s) reinstated and guidelines which would allow employers to reasonably expect that a potential hire will have their license(s) reinstated upon employment. Reinstatement policies and processes exist in other industries such as the practice of law, therefore there are examples to compare.

STA strongly recommends that FINRA institute a new Reinstatement Policy and Process which would allow individuals whose employment lapse is greater than the time period FINRA deems to cause such licenses to expire to reenter the financial services industry.

Conclusion

The STA appreciates the opportunity to comment on the Proposal. We also wish to acknowledge and thank FINRA and all the staff responsible for seeking input on their Engagement Initiatives.



Jon Schneider
Chairman of the Board



James Toes
President & CEO